

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TERRY S. BRAXTON,

Petitioner,

-v.-

9: 05-CV-O191
(TJM)(RFT)

JAMES T. CONWAY, Superintendent,

Respondent.

APPEARANCES:

TERRY S. BRAXTON

Petitioner, *pro se*

02-B-1237

Attica Correctional Facility

P.O. Box 149

One Exchange Street

Attica, New York 14011

THOMAS J. MCAVOY, Senior Judge

ORDER

Presently before the Court is an amended petition from Terry S. Braxton ("petitioner"). Dkt. No. 3. The amended petition was submitted by petitioner in compliance with the Order of this Court filed on March 14, 2005. Dkt. No. 2 ("March Order").

In his amended petition, petitioner complains of a judgment rendered in Onondaga County Court wherein petitioner was convicted, upon a plea of guilty, to Attempted Burglary in the First Degree. Dkt. No. 3 at 2. Petitioner claims that he was thereafter sentenced to a term of 10 years imprisonment together with a term of 5 years of post-release supervision. *Id.* at 2. The conviction was affirmed by the Appellate Division,

Fourth Department, and the Court of Appeals denied petitioner leave to appeal on August 10, 2004. *Id.* at 3. Petitioner did not petition for a Writ of Certiorari to the United States Supreme Court. *Id.*

Petitioner claims that he was denied “due process of law in his State Court proceedings” because petitioner’s waiver of his right to appeal was defective. Dkt. No. 3 at 6. Petitioner also claims that his plea was not knowingly, voluntarily, and intelligently made and that his sentence was unduly harsh and excessive. *Id.* at 7-9. For a more complete statement of petitioner's claims, reference is made to the amended petition.

WHEREFORE, it is hereby

ORDERED, that the Clerk of the Court serve a copy of this Order and the amended petition by **certified** mail upon the respondent and the Attorney General of the State of New York, and a copy of this Order by **regular** mail upon the petitioner, and it is further

ORDERED, that **within sixty (60) days** of the date of the receipt of this Order by the respondent, respondent shall file and serve an answer or other pleading to this amended petition, and it is further

ORDERED, that upon the filing of an answer or other pleading, the Clerk is directed to forward the entire file on this matter to the Court, and it is further

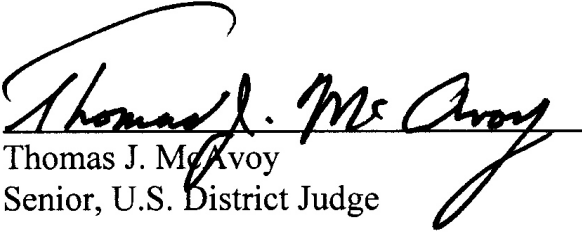
ORDERED, that all pleadings, motions or other documents relating to this action shall be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367.

Any paper sent by a party to the Court or the Clerk shall be accompanied by a certificate setting forth the date a true and correct copy of it was mailed to all

opposing parties or their counsel. Any letter or other document received by the Clerk or the Court which does not include a certificate of service which clearly states that an identical copy of it was served upon all opposing parties or their attorneys is to be returned, without processing, by the Clerk, to the party that sent it. Petitioner shall also comply with any other requests by the Clerk's office for any other documents that are necessary to maintain this action. Petitioner is also required to promptly notify the Clerk's Office and counsel for the respondent of any change in his address; his failure to do this will result in the dismissal of this action. All parties must comply with Rule 7.1 of the Northern District of New York in the filing of motions, which are to be made returnable before the assigned Magistrate Judge on any business day with proper allowance for notice as required by the Rules. All motions will be decided on papers without oral argument unless otherwise determined by this Court.

So Ordered.

Dated: May 11, 2005


Thomas J. McAvoy
Senior, U.S. District Judge